

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

IMPLICIT, LLC,

Plaintiff,

v.

NETSCOUT SYTEMS, INC.,

Defendant.

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**Civil Action No. 2:18-cv-53-JRG
LEAD CASE**

JURY TRIAL DEMANDED

FOURTH AMENDED DOCKET CONTROL ORDER

In accordance with the scheduling conference held in this case, it is hereby ORDERED that the following schedule of deadlines is in effect until further order of this Court:

Current Deadline	Amended Deadline	Event
September 9, 2019		*Jury Selection – 9:00 a.m. in Marshall, Texas Before Judge Rodney Gilstrap
August 12, 2019		*Pretrial Conference – 9:00 a.m. Marshall, Texas before Judge Rodney Gilstrap
N/A	August 7, 2019	*Notify Deputy Clerk in Charge regarding the date and time by which juror questionnaires shall be presented to accompany by jury summons if the Parties desire to avail themselves the benefit of using juror questionnaires ¹

¹The Parties are referred to the Court’s Standing Order Regarding Use of Juror Questionnaires in Advance of *Voir Dire*.

Current Deadline	Amended Deadline	Event
August 7, 2019		<p>*Notify Court of Agreements Reached During Meet and Confer</p> <p>The parties are ordered to meet and confer on any outstanding objections or motions <i>in limine</i>. The parties shall advise the Court of any agreements reached no later than 1:00 p.m. three (3) business days before the pretrial conference.</p>
August 5, 2019		<p>*File Joint Pretrial Order, Joint Proposed Jury Instructions, Joint Proposed Verdict Form, Responses to Motions <i>in Limine</i>, Updated Exhibit Lists, Updated Witness Lists, and Updated Deposition Designations</p>
July 29, 2019		<p>*File Notice of Request for Daily Transcript or Real Time Reporting.</p> <p>If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and e-mail the Court Reporter, Shelly Holmes, at shelly_holmes@txed.uscourts.gov.</p>
July 22, 2019	July 26, 2019	<p>File Motions <i>in Limine</i></p> <p>The parties shall limit their motions <i>in limine</i> to issues that if improperly introduced at trial would be so prejudicial that the Court could not alleviate the prejudice by giving appropriate instructions to the jury.</p>
July 22, 2019	July 26, 2019	Serve Objections to Rebuttal Pretrial Disclosures
July 12, 2019	July 19, 2019	Serve Objections to Pretrial Disclosures; and Serve Rebuttal Pretrial Disclosures
July 1, 2019	July 9, 2019	Serve Pretrial Disclosures (Witness List, Deposition Designations, and Exhibit List) by the Party with the Burden of Proof

Current Deadline	Amended Deadline	Event
June 3, 2019	June 19, 2019	*File Motions to Strike Expert Testimony (including <i>Daubert</i> Motions) No motion to strike expert testimony (including a <i>Daubert</i> motion) may be filed after this date without leave of the Court.
June 3, 2019	June 19, 2019	*File Dispositive Motions No dispositive motion may be filed after this date without leave of the Court. <u>Motions shall comply with Local Rule CV-56 and Local Rule CV-7. Motions to extend page limits will only be granted in exceptional circumstances. Exceptional circumstances require more than agreement among the parties.</u>
May 29, 2019	June 12, 2019	Deadline to Complete Expert Discovery
May 13, 2019	May 28, 2019	Serve Disclosures for Rebuttal Expert Witnesses
April 22, 2019	May 7, 2019	Serve Disclosures for Expert Witnesses by the Party with the Burden of Proof
April 16, 2019	May 1, 2019	Deadline to Complete Fact Discovery and File Motions to Compel Discovery
April 24, 2019	May 3, 2019	Deadline to Complete Mediation The parties are responsible for ensuring that a mediation report is filed no later than 5 days after the conclusion of mediation.
April 17, 2019		Comply with P.R. 3-7 (Opinion of Counsel Defenses)
April 5, 2019		*Claim Construction Hearing – 1:30 p.m. Marshall, Texas before Judge Rodney Gilstrap
March 19, 2019		*Comply with P.R. 4-5(d) (Joint Claim Construction Chart)
March 18, 2019		*Comply with P.R. 4-5(c) (Reply Claim Construction Brief)

Current Deadline	Amended Deadline	Event
March 11, 2019		Comply with P.R. 4-5(b) (Responsive Claim Construction Brief)
February 25, 2019		Comply with P.R. 4-5(a) (Opening Claim Construction Brief) and Submit Technical Tutorials (if any) Good cause must be shown to submit technical tutorials after the deadline to comply with P.R. 4-5(a).
February 13, 2019		Deadline to Substantially Complete Document Production and Exchange Privilege Logs Counsel are expected to make good faith efforts to produce all required documents as soon as they are available and not wait until the substantial completion deadline.
February 18, 2019		Comply with P.R. 4-4 (Deadline to Complete Claim Construction Discovery)
January 23, 2019		File Response to Amended Pleadings
January 9, 2019		*File Amended Pleadings It is not necessary to seek leave of Court to amend pleadings prior to this deadline unless the amendment seeks to assert additional patents.
February 4, 2019		Comply with P.R. 4-3 (Joint Claim Construction Statement)
February 1, 2019		NetScout and Sandvine to serve Supplemental Invalidity Contentions

(*) indicates a deadline that cannot be changed without showing good cause. Good cause is not shown merely by indicating that the parties agree that the deadline should be changed.

ADDITIONAL REQUIREMENTS

Notice of Mediator: The parties are to jointly file a notice that identifies the agreed upon mediator or indicates that no agreement was reached. If the parties do not reach an agreement, the

Court will appoint a mediator. The parties should not file a list of mediators to be considered by the Court.

Summary Judgment Motions, Motions to Strike Expert Testimony, and Daubert Motions: For each motion, the moving party shall provide the Court with two (2) copies of the completed briefing (opening motion, response, reply, and if applicable, surreply), excluding exhibits, in D-three-ring binders, appropriately tabbed. All documents shall be single-sided and must include the CM/ECF header. For expert-related motions, complete digital copies of the relevant expert report(s) and accompanying exhibits shall be submitted on a single flash drive. These copies shall be delivered as soon as briefing has completed.

Indefiniteness: In lieu of early motions for summary judgment, the parties are directed to include any arguments related to the issue of indefiniteness in their *Markman* briefing, subject to the local rules' normal page limits.


Motions for Continuance: The following excuses will not warrant a continuance nor justify a failure to comply with the discovery deadline:

- (a) The fact that there are motions for summary judgment or motions to dismiss pending;
- (b) The fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;
- (c) The failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.

Amendments to the Docket Control Order ("DCO"): Any motion to alter any date on the DCO shall take the form of a motion to amend the DCO. The motion to amend the DCO shall include a proposed order that lists all of the remaining dates in one column (as above) and the proposed changes to each date in an additional adjacent column (if there is no change for a date the proposed date column should remain blank or indicate that it is unchanged). In other words, the DCO in the proposed order should be complete such that one can clearly see all the remaining deadlines and the changes, if any, to those deadlines, rather than needing to also refer to an earlier version of the DCO.

Proposed DCO: The Parties' Proposed DCO should also follow the format described above under "Amendments to the Docket Control Order ('DCO')."

So ORDERED and SIGNED this 14th day of March, 2019.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE